

## What You Need to Know About the Transaction Fees Ban

### *Groundbreaking TPBC Bill Creates Nation's Strongest Prohibition of Costly, Hidden Fees*

TPBC broke major national ground this session with the passage of landmark legislation that comprehensively bans transaction fees assessed by PBMs on the adjudication of prescription claims. **SB 94, sponsored by Sen. Juan Hinojosa of McAllen, is the first law of its kind in any state and gives Texas retail pharmacies the nation's strongest protections against the often-hidden charges. The bill, which was signed into law on May 15 and takes effect on Sept. 1, will save Texas pharmacies millions of dollars each year in hidden charges.**

**The new law is the culmination of more than two years of hard work by TPBC, which started aggressively pursuing the end of transaction fees in 2013, working closely with TDI officials and persuading HHSC officials to bar the fees in Medicaid through MCO contract amendments. We believe this bill will be used as a model in other states, much like our 2013 MAC transparency legislation.**

The House companion (HB 255) was sponsored by **Rep. Bobby Guerra of McAllen.**



### Issue Overview

For years, most pharmacy benefit managers (PBMs) operating in Texas have routinely assessed fees on each claim submitted for reimbursement by the pharmacies in their provider networks. The fees are as little as 2-3 cents per claim to as much as \$20 or more. **Because a retail pharmacy typically submits hundreds of insured prescriptions daily for reimbursement, the fees quickly add up to thousands of dollars annually in hidden transaction costs.**

**SB 418, passed by Sen. Jane Nelson in 2003, prohibited the direct or indirect assessment of transaction fees on pharmacy claims by health plans. Texas Department of Insurance, which is responsible for enforcing the provisions of SB 418, requested clarification of the law because it said PBMs were using loopholes in the 2003 statute to disguise transaction fees by creatively coding them under other names.**

Nonetheless, **TPBC has continuously pressed TDI to enforce the law**, and an increase in the agency's enforcement actions resulted in a March 2015 announcement that the state's four largest PBMs, after TDI enforcement actions, **signed voluntary Compliance agreements to cease charging the fees on April 1, 2015. Those PBMs are Caremark, Catamaran, Express Scripts and Prime Therapeutics.**

### **SB94 Establishes Subchapter 1 in Chapter 1369 of the Texas Insurance Code to:**

- Add pharmacies to the list of health-care providers that cannot be assessed a transaction fee.
- Specifically prohibit the assessment of fees for network management services, inclusion in a network, services related to the adjudication of a claim, services related to processing a claim, services related to transmitting a claim, or for developing a claims processing and adjudication network.
- Give Texas Department of Insurance (TDI) stronger enforcement capabilities.

The law does not apply to self-funded health plans as defined by ERISA (ERS, TRS), federal health plans — like Medicare or TRICARE — or workers' compensation plans.

### Practical Application

**SB 94's Sept. 1, 2015, effective date means that any provider contract executed between a PBM and a Texas pharmacy on or after that date cannot legally include any type of transaction- or network-related fee. Contracts executed before Sept. 1, 2015, are covered by the provisions of SB 418 — which TDI does consider to prohibit the fees — but those contracts will be covered by SB 94 when they are renewed or amended after Sept. 1, 2015.**

## PBM Compliance Status

Of the 36 PBMs registered with TDI to operate in Texas, all but one state that they are now complying with the provisions of SB 418 (the current law banning transaction fees). The one holdout is Argus, which has been targeted by TDI with a license revocation hearing for charging transaction fees and other alleged offenses. Argus vigorously maintains that the provisions of SB 418 — which prohibit transaction fees in a different section of the Texas Insurance Code than do the provisions of SB 94 — do not apply to PBMs.

Enforcement challenges are certain to continue despite the stronger, more specific provisions of the new law.

**Many PBMs will comply with the law, but some will try to skirt the provisions or rename/recode the fees.**

**Enforcement and compliance, then, will continue to be complaint-driven.** At least one PBM — Prime Therapeutics — sent out new pharmacy provider contracts that specified a transaction fee, even though the contracts would take effect after Sept. 1. TPBC brought the situation to the attention of both Prime Therapeutics and TDI, and the PBM later told TPBC that it had mistakenly mailed the wrong contracts to Texas pharmacists. It has since mailed out new, revised contracts without the fees.

## Where to Get Assistance

Your best source of information is TDI's Pharmacist Resource Page located online at <http://www.tdi.texas.gov/hprovider/pharmacy.html>.

You can complete and submit a complaint form online at: <https://wwwapps.tdi.state.tx.us/inter/per/root/consumer/complform/complform.html>. You can also complete the editable pdf version of the form at <http://www.tdi.texas.gov/forms/consumer/cp012complform.pdf> and submit it to TDI by fax at 512-475-1771 or email it to [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov).

You can also submit complaints in writing to TDI; please be sure to include your contact information, the name of the PBM involved in the complaint and evidence documenting the assessment of prohibited transaction fees.

### Mail your letter and documentary evidence to:

Texas Department of Insurance  
Consumer Protection - MC 111-1A  
P.O. Box 149091  
Austin, Texas 78714-9091

## Transaction Fees Compliance in Medicaid Managed Care

**Section 8.1.18.5 of the Uniformed Managed Care Terms & Conditions** — HHSC's contract with managed care organizations in the Texas Medicaid program — prohibits the assessment of transaction fees by either MCOs or their subcontractors (PBMs): **"The MCO and its Subcontractors cannot directly or indirectly charge or hold a Member or Provider responsible for claims adjudication or transaction fees."**



## What You Need to Do

*Pharmacist vigilance is essential to ensure PBM compliance with the law. Here's how you can help TPBC and TDI with enforcement while protecting your own bottom line:*

- **Carefully review the claim reconciliation statements you get from your contracting PBMs to make sure you are not being charged transaction fees.** The fees may have other names, so watch for terms such as "transmittal fee," "line charge," "access fee" or "network charge."
- **If you see something on a statement that looks like a transaction fee or a fee assessed for accessing the PBM's claims network, contact the PBM and dispute the charges. If you don't get a satisfactory resolution, file a complaint with TDI.**
- **Carefully review all contracts and contract amendments you receive from a PBM to be sure that there are no clauses or provisions that specify a transaction- or network-related fee. If you find such a provision, don't sign the contract and call TPBC at 512-992-1219 or email [mwright@txrxCouncil.org](mailto:mwright@txrxCouncil.org).**
- **Make sure you correctly identify the health plan under which a transaction fee is charged. Remember that PBMs can legally charge transaction fees in Medicare Part D plans, workers' comp plans or self-funded plans.**

**If you find that you are being charged any type of transaction or claims adjudication fee by a managed-care PBM in the Medicaid/CHIP program, you should contact the PBM through its specified appeals/grievance/complaint process to protest the assessment of the fees and to insist they be removed and refunded.**

**HHSC requires that a pharmacy exhaust the complaints or grievance process with the PBM before filing a complaint with HHSC.** The managed-care page of the Vendor Drug Program website — [txvendordrug.com/managed-care](https://txvendordrug.com/managed-care) — links to the Pharmacy Assistance Chart, which identifies the individual call center phone numbers for each managed-care PBM. The page also links to HHSC’s complaints and appeals process, which has separate channels for the managed-care and fee-for-service programs.

### **We’re Vigilant, But We Need Your Help**

TPBC passed the nation’s first tough, comprehensive ban on transaction fees in commercial and public health plans and earlier secured the prohibition of those fees in Medicaid managed care. On statutory and contractual grounds then, the fees have effectively been abolished in Texas, but you should not simply assume that they will never again show up on your claims transaction details. Your ongoing vigilance — along with TPBC’s close monitoring of this issue in tandem with Texas Department of Insurance — is critical to drive PBM compliance, which will save your pharmacy thousands of dollars each year in fees.



**is the proven leader in advocacy for Texas independent pharmacy.**

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